

BACKGROUND INFORMATION

STRATEGY TO COMBAT ABUSIVE AVOIDANCE TRANSACTIONS

Today, the Internal Revenue Service received approval from the United States District Court, Northern District of Illinois to serve a John Doe summons on Jenkins & Gilchrist, asking the law firm to identify taxpayers who may have invested in listed transactions or other potentially abusive transactions organized or sold by the firm's Chicago office.

The key features of a John Doe summons are that the IRS must seek court approval to serve it and, if there are objections to the summons, the statute of limitations for assessing tax deficiencies for the unknown parties (the "John Does", in this case, the investors) is automatically suspended beginning six months after the service of the summons, while objections to the summons are resolved.

This is the latest step in a comprehensive strategy to ensure all taxpayers pay their fair share. The Treasury Department, the Internal Revenue Service and the Department of Justice are moving aggressively to combat abusive tax avoidance transactions.

This multi-pronged strategy includes requiring prompt disclosure of potentially abusive transactions by taxpayers and promoters, providing more timely analyses of these transactions and publishing legal guidance as early as possible. It also involves auditing taxpayers and promoters to ensure that they have complied with their obligations under the tax rules. In particular, the IRS conducts promoter examinations to determine whether a promoter has complied with regulations requiring identification of potentially abusive tax avoidance transactions by registering such transactions and maintaining and providing investor lists to the IRS upon request, and to determine whether the promoter may be liable for penalties if they have failed to comply with the registration and list maintenance requirements. Some promoters have cooperated by giving the IRS the information to which it is entitled; however, others have not.

Among the key steps taken:

- The IRS is investigating 92 promoters (some of which are related) including law firms, investment banks and accounting firms.
- Since the beginning of 2002, the IRS has issued 268 summonses to 35 promoters (some of which are related) to examine their compliance with the registration and list maintenance requirements, by requesting information and investor lists.

- This is the first action which seeks permission, as required by statute, to issue a summons for the primary purpose of obtaining the identities of the investors in what the IRS has determined are potentially abusive tax shelters.
- Of these summonses, 78 involving seven promoters have been referred to the Department of Justice for enforcement.
- The Justice Department has filed summons enforcement actions against four promoters.

In addition to these efforts to ensure promoters comply with the law, the IRS and Treasury Department have also taken the following steps:

- The IRS and Treasury have identified 25 abusive transactions through formal guidance.
- The IRS is auditing taxpayers to determine whether they invested in abusive transactions, using information derived from promoter audits, a disclosure initiative (described below), public information and other sources.
- The Large and Mid-Size Business Division (LMSB) conducted a disclosure initiative from December 2001 to April 2002 that resulted in 1,664 disclosures from 1,206 taxpayers. Taxpayers disclosed transactions in which they claimed deductions or losses amounting to billions of dollars. Agents continue to investigate the leads generated by information provided by the taxpayers who came forward.
- IRS teams have been assembled to implement a comprehensive strategy to deal with questionable transactions. Teams are headed by an LMSB executive and include representatives from Chief Counsel, technical advisors and field specialists. The Chief Counsel has also created new senior executive position within the Office of Chief Counsel to focus on potentially abusive tax avoidance transactions.
- LMSB launched additional settlement initiatives involving three types of abusive transactions in October 2002 to offer an equitable alternative to protracted enforcement and litigation. The last of these settlement initiatives ended in March 2003.

- The President's budget proposes an additional \$100 million to support this effort to pursue high-income individuals and businesses. This request is awaiting action by Congress.

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